

Laxmi Devi (Mst.) Vs. the Civil Judge (Senior Division) and ors.

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Court : Rajasthan

Decided On : Apr-23-2008

Reported in : RLW2008(3)Raj2015

Judge : Narendra Kumar Jain, J.

Appellant : Laxmi Devi (Mst.)

Respondent : The Civil Judge (Senior Division) and ors.

Disposition : Petition allowed

Judgement :

Narendra Kumar Jain, J.

1. Heard learned Counsel for the parties.
2. The plaintiff/petitioners have preferred this writ petition challenging the impugned order dated 23.1.2004, whereby the trial Court rejected their applications under Order 22 Rule 3, C.P.C. as well as. under Section 5 of the Limitation Act for condonation of delay in filing the application for substitution of legal representatives of the deceased plaintiff Munna Singh on the record.
3. The sole plaintiff instituted a suit for specific performance against the defendants in the trial Court. The plaintiff expired on 22.2.2003. The legal representatives of deceased plaintiff moved two applications under Order 22 Rule

3, CPC as well as under Section 5 of the Limitation Act in the trial Court on 9.10.2003, wherein it was stated that on 25.9.2003, the Counsel for the plaintiffs told their uncle Arjun Singh that an application is required to be filed in the suit for substitution of legal representatives of deceased plaintiff on record, therefore, he should inform their legal representatives, thereafter they immediately contacted their Counsel and moved the present applications.

4. The application was contested by the defendants by filing a written reply dated 15.1.2004 to the application under Order 22 Rule 3, C.P.C.

5. The learned trial Court vide its order dated 23.1.2004 came to a conclusion that the suit abated automatically after expiry of period of 90-days from the date of death of plaintiff, as no application for substitution of his legal representatives has been filed. The trial Court further observed that the legal representatives of deceased have not filed any application under Order 22 Rule 9, C.P.C. for setting aside the abatement of the suit. Consequently, the trial Court dismissed both the applications vide its order dated 23.1.2004, which has been impugned in this writ petition.

6. Learned counsel for the petitioners contended that the petitioners were not aware about the filing of such application for substitution of legal representatives and they came to know about it, when their counsel informed their uncle Arjun Singh on 25.9.2003, who told them to take necessary steps in this regard, and immediately thereafter they moved the required application for substitution, along with the another application under Section 5 of the Limitation Act on 9.10.2003. Therefore, the application ought to have been allowed and the legal representatives of deceased plaintiff should have been taken on record. He further contended that the approach of the learned trial Court in rejecting the application was only technical and in the interest of justice the said application ought to have been treated, as an application under Order 22 Rule 9, C.P.C. itself.

7. In support of his contention, he relied upon K. Rudrappa v. Shivappa reported in 2005 (1) WLC (SC) Civil, Page 234 and Mithalal Dalsangar Singh and Ors. v. Annabai Devram Kini and Ors. reported in 2003 (2) W.L.C. (SC) Civil Page, 597.

8. Learned counsel for the respondents defended the impugned order and prayed for dismissal of the suit.

9. I have considered the submissions of the learned Counsel for the parties and examined the impugned order passed by the trial Court in the light of their submissions and the observations of the Hon'ble Supreme Court in the above referred cases, and after considering the same, I find that the trial Court committed an illegality in dismissing the applications of the petitioners, and the impugned order is liable to be set aside.

10. The Hon'ble Supreme Court, in above referred cases, considered the scope of Order 22 Rule 3 and Section 151, of the Code of Civil Procedure, 1908, wherein an application under Order 22 Rule 3, C.P.C. was filed after expiry of period of limitation without any separate application under Order 22 Rule 9, C.P.C., and held that such technical objections should not come in doing full and complete Justice between the parties. Para No. 10 of the judgment of the Hon'ble Supreme Court in case of K. Rudrappa v. Shivappa (Supra) is reproduced as under:

Having heard learned Counsel for the parties, in our opinion, the appeal deserves to be allowed. The case of the appellant before the District Court was that he was not aware of the pendency of the appeal filed by his father against the order passed by the Tehsildar. The father of the appellant died in June, 1994 and the appellant came to know about the pendency of appeal somewhere in September, 1994, when he received a communication from the advocate engaged by his father. Immediately, therefore, he contacted the said advocate, informed him regarding the death of his father and made an application. In such circumstances, in our opinion, the learned Counsel for the appellant is right in submitting that a hyper technical view ought to have been taken by the District Court in rejecting the application inter alia observing that no prayer, for setting aside abatement of appeal was made and there was also no prayer for condonation of delay. In any case, when separate applications were made, . they ought to have been allowed. In our opinion, such technical objections should not come in doing full and complete justice between the parties. In our considered opinion, the High Court ought to have set aside the order passed by the District Court and it ought to have

granted the prayer of the appellant for brining them on record as heirs and legal representatives of deceased Hanumanthappa and by directing the District Court to dispose of the appeal on its own merits. By not doing so, even the High Court has also not acted according to law.

11. In view of above discussion and reasons, the Writ petition is allowed. The impugned order dated 23.1.2004 passed by the trial Court is set aside. Both the applications filed by the plaintiff/petitioners under Order 22 Rule 3, C.P.C. and under Section 5 of the Limitation Act are allowed. The legal representatives of deceased plaintiff Munna Singh, as mentioned In the application are taken on record. The trial Court is directed to proceed with the suit further in accordance with the law.

Both the parties are directed to appear before the trial Court on 2nd July, 2008.

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